

How to tackle (organized) crime in Europe? The EU policy cycle on serious and organized crime and the new emphasis on harm

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In 2010, the EU Council established a multi-annual policy cycle in order to 1) define priorities in the EU-wide “fight against serious international and organized crime,” on this basis 2) develop and 3) implement appropriate interventions to tackle the prioritized crime phenomena and 4) evaluate the results achieved in order to identify a new set of priorities for the following cycle. After a two-year trial cycle, the first policy-cycle started in 2013 and is due to last until 2017 (Europol, 2013: 9).

This policy cycle is a major innovation because it embodies a more rational, efficient and accountable policy-making, in which crime control goals are set on the basis of evidence and public arguments and outcomes are objectively evaluated ex-post. Still today in the field of crime control it is common to set goals on the basis of emergencies, or the gut feelings of national policy leaders and to carry out no serious evaluation of policy outcomes (den Boer, 2006; Ratzel, 2013; Fijnaut 2014).

The cycle draws from Europol’s Serious and Organised Crime Threat Assessment (SOCTA), which recommends the criminal activities and actors to be prioritized. A praiseworthy innovation of the SOCTA is its focus on the harms resulting from crime, which are considered a key criterion for establishing policy priorities. However, as argued more in detail below, the assessment of the harm should be carried out in a more systematic, transparent and open-minded way in order to meet the expectations raised in the policy cycle.

1. The EU policy cycle on serious international and organized crime

The cycle consists of four phases, which are described as follows in Europol’s 2013 SOCTA:

- **Step 1: SOCTA**— the Serious and Organised Crime Threat Assessment, developed by Europol delivers a set of recommendations based on an in-depth analysis of the major crime threats facing the EU.
- **Step 2: Policy-setting and decision making**— The Council of Justice and Home Affairs Ministers uses the recommendations of the SOCTA to define its priorities for the next four years. MASP - Multi-Annual Strategic Action Plans will be developed from the priorities in order to define the strategic goals for combating each priority threat (2013). These projects will set out yearly operational action plans (OAPs) to combat the priority threats. The first plans will be developed during 2013 to become operational in 2014.
- **Step 3: Implementation and monitoring** of annual OAP’s on the basis of the MASPs using the framework of EMPACT (European Multidisciplinary Platform against Criminal Threats). COSI [the Standing Committee for the EU Internal Security, N.o.A.] invites the

relevant MS and EU agencies to integrate the actions developed in the OAPs into their planning and strategy.

• **Step 4: Review and assessment**—the effectiveness of the OAPs and their impact on the priority threat will be reviewed. In the meantime, Europol continuously engages in horizon scanning to identify new threats and trends. In 2015, an interim threat assessment (SOCTA) will be prepared by Europol to evaluate, monitor and adjust (if required) the effort in tackling the priority threats (Europol, 2013: 9).

The new policy cycle is made possible by the new competencies attributed to EU institutions in the area of crime control by the Treaty of Lisbon, which became effective on 1 December 2009 (Fijnaut, 2014). Within the new constitutional framework established in the amended Treaty on the Functioning of the European Union, the fight against (serious and organized) crime is considered a shared responsibility of the EU and its Member States (MS), thus becoming part of what was, until the Treaty of Lisbon, referred to as the First Pillar.

2. The scope of application

Despite the original focus on organized crime, the new competencies can be applied to a large spectrum of criminality. In fact, the EU never provided an official definition of organized crime and the latest Europol's SOCTA (2013: 42) merely refers to the definition of a criminal organization put forward by the Framework Decision on Organised Crime of October, 24, 2008. This is very broad, as it defines a "criminal organization" as a "structured association established over a period of time, of more than two persons acting in concert with a view to committing offences which are punishable with the deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, to obtain, directly or indirectly, a financial or other material benefit" (European Council, 2008b: 42). This definition means that any group from the Sicilian Cosa Nostra to a burglars' clique, from Al Qaeda to a youth gang engaging in assaults, can be considered a form of organized crime.

Since the beginning of the present century, moreover, the EU institutions have progressively accompanied, or even tout court substituted, the expression "organized crime" with that of "serious crime."¹ Although the latter expression has also never been precisely defined, there is no doubt that it is even broader than organized crime. As Europol (2003: 43) again states in its latest SOCTA, "serious crime refers to criminal activity deemed worth reporting on, which does not meet the OCG definition set out in the 2008 Framework decision. De facto it also concerns lone actors or individual actions."

¹ In 2002, the European Council set up Eurojust, a judicial cooperative body, "with a view to reinforcing the fight against serious crime" (European Council, 2002) and, in 2009, it enlarged Europol's mission "to support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating organised crime, terrorism and other forms of serious crime affecting two or more Member States" (European Council, 2009, article 3). The 2009 "Stockholm Programme," the third EU multi-annual programme to put an "area of freedom, security and justice" in place, also called for "protection against serious and organized crime" (European Council, 2010).

Given the very broad scope of serious crime, it is legitimate to ask which forms of crime, if any, are excluded from EU competencies. Article 83(1) of the Treaty on the Functioning of the European Union (TFEU 2008), as amended by the Lisbon Treaty, authorizes the European Parliament and the Council to establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension. Accordingly, serious crime results “from the nature or impact of such offences or from a special need to combat them on a common basis” (European Council, 2008a). The article also lists the areas of crime identified as serious, on the basis of the above-mentioned criteria: “terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.” A final clause of Article 83(1) states that other areas of crime can be added by the Council by a unanimous decision after obtaining the consent of the European Parliament (ibid.).

Judging by the list of crimes selected by Europol (2013: 39) in its 2013 SOCTA, the treaty list is not considered exclusive. SOCTA recommends that the counterfeiting of goods with an impact of public health and safety and a specific type of VAT fraud, the Missing Trader Intra Community fraud, are also recognized as key threats. The report also presents two other activities not included in the treaty list, environmental crime and energy fraud, as emerging threats. Perpetuating the long-lasting conceptual confusion concerning organized crime (see Paoli and Vander Beken, 2014), moreover, the latest Europol’s SOCTA uses the latter expression to refer to both activities and actors: in fact, it speaks both of “organized crime groups (OCGs)” and “serious and organized crime areas of activities (SOC areas)” (ibid.: 42).

3. Europol’S SOCTA and the methodology to assess the harms of crime

The extent to which the Multi-Annual Strategic Action Plans, which are being developed by the European Council of Justice and Home Affairs, and COSI will follow up on Europol’s recommendations is still unclear. There is no doubt, however, that Europol has been entrusted with a major responsibility in identifying EU-wide crime control priorities in its SOCTAs.

Previous Europol’s Organized Crime Threat Assessments (OCTAs) were variously criticized by academic scholars and this editorial does not intend to repeat such criticisms, many of which were justified (Van Duyne and Vander Beken, 2009 and Zoutendijk, 2010). Even Europol’s former Director Max-Peter Ratzel (2013) admits that in 2005, Europol did not have the necessary human and logistical resources or the fine-tuned methodology and comprehensive data to shift smoothly from a backward-looking Organized Crime Situation Report to a forward-looking, strategic OCTA. Ultimately, these deficiencies were largely not Europol’s fault but rather reflected the insufficient support received by Europol from the EU central institutions and the MS and the poor intelligence of the MS’s law enforcement agencies. It is undoubtedly positive that Europol (2013: 42-46) has sought the cooperation of three academics for its latest SOCTA and published (parts of) the latter’s methodology in an annex.

An innovative and very positive element of this new methodology is its focus on the impact—and thus the harm—of crime. This new focus reflects the recent emphasis on serious crime, a concept that resonates with harm (Dorn, 2009), and specifically the emphasis on the impact of the offences placed by above-mentioned Article 83 TFEU to justify the establishment of minimum rules concerning the definition of EU-wide criminal offences and sanctions. Even more fundamentally, the harm “caused” by a criminal activity is, with few exceptions, considered crucial in the legal doctrine to justifying the very criminalization of such an activity and the assignment of penalties (e.g., Ashworth, 2006: 30-39; for a review of this debate, see Paoli and Greenfield, 2013).

In its SOCTA methodology, Europol (2013: 43) mentions that it uses “effects indicators to measure the effect that OCGs and crime areas have on EU society.” Europol further adds that “the effects of OCG activities can be assessed as high, medium or low on any or all of the dimensions including physical and psychological, political, financial and economic, social technological and environmental.” (ibid.). However, Europol provides no further indication on what these indicators consist of or how it assigns a high, medium or low score.

Given this methodological inaccuracy, it is hardly surprising that the analysis of the harms associated with the criminal activities is disappointing. The 2013 SOCTA merely provides a list of banalities that are partially contradicted by the results of empirical research and sometimes even by common sense. Furthermore, Europol’s analysis makes no distinction between the harms caused by the activities and the harms and costs of the policy interventions carried out to tackle the activities themselves.

4. Europol’s assessment of the harms of drug trafficking

In the case of drug trafficking for example, the harms are described as follows:

Drugs production and trafficking are among the most profitable types of organised crime. Violence, public health issues, a high number of deaths and feelings of insecurity are all linked to the trade in drugs. Prevention and harm reduction campaigns cost millions of Euros to MS. OCGs continue to strive to minimise costs during the drug production process, which entails serious risks for drug users. Synthetics and new psychoactive substances (NPS) are produced in complex processes lacking control mechanisms; low quality products are used as precursors for synthetics or cutting agents for heroin; pesticides and insecticides are intensively used to maximise cannabis harvest yields (Europol, 2013: 19).

Contrary to Europol’s assessment, a number of studies have shown that the violence directly associated with drug production and trafficking in Europe is much more limited than usually assumed. In a study of the harms associated with cocaine trafficking in Europe, for example, Paoli, Greenfield and Zoutendijk (2013) concluded—on the basis of an analysis of all major criminal investigations of the Belgian Federal Police and interviews of 20 convicted traffickers—that there was no evidence of murders associated with cocaine trafficking in Belgium for the period considered. The only deaths associated with it were those of the “body packers,” killed by the inadvertent explosion of the cocaine balls they were carrying in

the bodies (see also Pearson and Hobbs, 2001). On the basis of their scales of severity and incidence, Paoli et al. (2013) thus ranked the lethal harms resulting from cocaine trafficking in Belgium as “catastrophic” but “rare” and gave them a “medium/high priority.” Less serious harms resulting from the violence associated with cocaine trafficking occurred more often, but given their lower severity, all these harms, with one exception, were given a low priority. Similar conclusions emerged from the assessment of the violence associated with cocaine trafficking in the Netherlands (Paoli and Kersten, 2013) and cannabis production in Belgium (Decorte et al., 2013).

The “serious risks for drug users” that Europol draws from the current production process of synthetics and new psychoactive substances, as well as the “lack of control mechanisms” and “low quality products” are also the result of policy choices. It is thus hardly justifiable to assign these harms to the criminal activity itself and present them simply as a reason for prioritizing the latter.

The statement “pesticides and insecticides are intensively used to maximize cannabis harvest yields” from Europol’s text should also be more nuanced. In web surveys, many small-scale growers report that they started growing cannabis in order to ensure they were smoking a natural product, and that they hence use no pesticides (Decorte, 2011). Large-scale growers do use pesticides, but there is no consistent evidence they use these substances in more dangerous amounts, concentration or types than, for example, growers of tomatoes or peppers (e.g., Decorte et al. 2011). Moreover, if cannabis were legal, it would be much easier to ensure quality controls.

To my knowledge, there is also limited support for stating that “feelings of insecurity are ...linked to the trade in drugs” (Europol 2013: 19). Drug production and wholesale trafficking, which is what Europol presumably focuses on, are mostly invisible and thus hardly likely to cause public alarm. Only in the Netherlands does the production of synthetic drugs and cannabis increasingly occur in local cities and, according to some observers (Fijnaut, 2013, personal communication), it has a negative impact on feeling of safety. Aggressive street dealing can also cause widespread feelings of insecurity but most large European cities prohibit such behaviors.

Contrary to what Europol (2013: 19) states, the “millions of Euros” “prevention and harm reduction campaigns cost ... to MS” cannot be considered a cost of drug trafficking itself. Rather, they are the costs of policies developed to tackle the demand, and not the supply, of drugs. Counterfactual reasoning proves this point: if drug trafficking were “abolished by law,” i.e., legalized, the money to be invested in prevention and harm reduction campaigns would be bound to increase rather than diminish (see also Levi et al., 2013: 11 and Levi and Burrows, 2008).

The overall impression of the paragraph on the harms of drug trafficking is that Europol has had difficulties in identifying the harms associated with this criminal activity and did not want to admit that most of these harms are the result of policy choices. This notion is, a key and consistent finding of the assessments of the harms associated with cocaine trafficking in

Belgium and the Netherlands and cannabis production in Belgium (Paoli et al. 2013, Paoli and Kersten, 2013 and Decorte et al., 2013). European law enforcement agencies and policy-makers should be more honest with their constituencies, admit this point and explain why the production and distribution of some psychoactive substances, such as cannabis, cocaine and synthetic drugs, were prohibited in the first place: namely, to reduce their consumption. It might well be that the policy is effective because the harms “caused” by policy on the supply side are offset by the harms prevented on the demand side through the criminalization of cocaine. However, this empirical assessment has so far never been attempted.

5. Europol’s assessment of the harms of human smuggling

Even more controversial is Europol’s (2013: 23) assessment of the harms associated with human smuggling or, as Europol puts it, the facilitation of illegal immigration:

Facilitated migrants can suffer severe physical, psychological and social harm. Over the past few years, there have been an increasing number of reports of migrants losing their lives during journeys. Attempts to cross the sea or “blue” borders are particularly dangerous and have claimed the lives of many migrants. Emerging facilitation techniques are very risky and include clandestine entry in refrigerated vehicles and tankers or concealment in plastic bags sealed with tape. Some facilitators use violence to intimidate migrants. Upon arrival in their destination countries, migrants suffer further due to their illegal status and lack of access to public services such as education, housing and health care.

Here, Europol blatantly obscures the fact that most of the harms associated with human smuggling are not primarily the fault of the “bad” traffickers but are largely induced by the EU restrictive immigration policies, as clearly shown by numerous tragedies in the Mediterranean Sea and along the Bulgarian-Turkish border. Why is an increasing number of “migrants losing lives during their journeys” and why are the “emerging facilitation techniques ... very risky”? Let’s be honest: This is because EU MS have intensified controls, built up fences and high walls, and often instruct their coast guard vessels not to rescue the unsafe boats containing hundreds of migrants (*Economist*, 2013; Gatti, 2013).

The EU and its MS’ wish to control migration flows is perfectly legitimate: European countries have the right—and, according to many of their citizens, even the duty—to prevent hundreds of thousands of Third World people from flooding our job markets and taking advantage of our welfare systems. However, as thousands of undocumented migrants keep on trying to enter the EU with the hope of having a better life and a considerable portion might be entitled to asylum, it is also the duty of the EU and its MS to develop migration and asylum policies that recognize migrants’ basic human rights, including the right to asylum and to minimize the harms resulting from these policy choices and any resulting illegal activities.

Conclusion: The potential and challenges of assessing the harms of crime

As these examples show, the focus on harm, if developed properly and honestly, obliges policy-makers to justify their policy choices on the basis of evidence and to envisage policies that can minimize the harms of both the criminal activities themselves and the policy enacted to control them. Given the potential scope of harm assessment, the question is rather if the latter—and thus the identification of priorities in crime control—should be entirely entrusted to Europol or instead also involve higher-ranking policy-makers. As a law enforcement agency, Europol has the task to enforce the laws and related policies, not to question them—and this may well explain Europol's restraint in the assessment of crime harms in the latest SOCTA. As seen earlier, the assessment of the harms of crime, if it includes the determination of the causes of the harms, may well lead to a re-assessment and eventually re-focus of some control policies—and is ultimately the competence of policy-makers.

Assessing the harms of any activity is a daunting exercise that has to overcome considerable conceptual and technical challenges. It is also tricky, as such an evaluation cannot be done through scientific means alone but necessarily also reflects the social norms of a community (Paoli and Greenfield, 2013)— another reason why policy-makers should ultimately be involved. It is a normative, and not a purely empirical, decision to establish if the harms associated with drug use are to be considered a consequence of drug production and trafficking or if the death of an offender has to be weighed in the same way as the death of a victim. In a recent article, Greenfield and Paoli (2013) have developed a harm assessment framework addressing most of these conceptual and technical challenges and clearly distinguishing between the empirical assessments that can be made almost value-free by scientists and intelligence analysts and those that are normative and should thus be left to policy-makers. An alternative, albeit less complete, route is to assess the costs of different criminal activities, considering monetary costs a proxy of harms (e.g., Levi et al., 2013).

The methodological difficulties of assessing harms are probably an important reason why the UK Serious and Organized Crime Agency (SOCA) gave up its attempts to assess and compare the harms associated with different criminal activities, after publishing two different conceptual frameworks (SOCA, 2008 and 2010: 25).² SOCA's attempts were meant to fulfil “the overarching aim” set by the 2008 UK Organised Crime Control Strategy: “namely, achieving a tangible and lasting reduction in the harm caused to the UK by organised crime” (SOCA, 2008: n.p.). The 2011 plan to establish SOCA's successor, the National Crime Agency, only speaks more loosely of developing a “national intelligence picture” that “will make available a consolidated and prioritised view of those causing harm to the UK” and a “prioritisation of harm and impact” (Home Office, 2011: 14)

Another possible reason for abandoning SOCA's ambitious and timely project is that the thorough and unprejudiced assessment of the harms associated with different criminal

² Mackenzie and Hamilton-Smith (2011) discuss some of the difficulties encountered by SOCA in implementing a harm-based approach.

activities in Europe might produce some unpleasant surprises for policy-makers, as the above-mentioned examples of drug trafficking and human smuggling suggest. Namely, these empirical assessments might give policy-makers the evidence that the harms associated with activities they have until then prioritized are lower than commonly assumed and/or are primarily the results of policy decisions and interventions, thus suggesting that policy goals and/or interventions have to be profoundly revised.

Hopefully, EU policy-makers will not be discouraged by the many conceptual and methodological difficulties of assessing harms and by the risk of finding out what they did not want to see. For inspiration, they should look at the policy principles of one of the EU MS, Finland. Since the 1970s, in fact, the main goal of Finnish penal policies has been twofold: “(1) the minimization of the costs and harmful effects of crime and crime control and (2) the fair distribution of these costs among the offender, society and the victim” (Lappi-Seppälä, 2012). These aims would also be worth of the whole European Union, as this regards itself as a worldwide champion of human rights. And deeds—in this case, adequate analyses, policy choices and interventions—should follow words.

References

- Ashworth, A. 2006. *Principles of Criminal Law*. Oxford: Oxford University Press, 5th ed.
- Decorte, T. 2011. ‘Stories’, ‘Facts’ And ‘Myths’. Perceptions of Domestic cultivators on Potency and Quality of Cannabis. In T. Decorte, G.R. Potter, M. Bouchard, eds. *World Wide Weed: Global Trends in Cannabis Cultivation and its Control*. Farnham: Ashgate:
- Decorte, T., L. Paoli, J. Heyde, L. Kersten, E. van Dun and M. Vlaemynck. 2013. Cannabis production in Belgium: assessment of the nature and harms, and implications for priority setting. Research report submitted to Belspo, Belgian Federal Science Office.
- den Boer, M. 2006. Fusing the Fragments. Challenges for EU Internal Security Governance on Terrorism, in D. Mahncke and J. Monar, eds., *International Terrorism: A European Response to a Global Threat?* Brussels: Peter Lang: 83-113.
- Dorn, N. 2009. The End of Organised Crime in the European Union. *Crime Law and Social Change* 51: 283–295.
- Economist, The. 2013. Bulgaria: A nightmare for all: November 30:
<http://www.economist.com/news/europe/21590946-bulgaria-struggling-cope-syrian-refugees-nightmare-all>
- European Council. 2002. Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (2002/187/JHA). *Official Journal of the European Communities* L 63: 1-13.
- . 2009. Council Decision of 6 April 2009 establishing the European Police Office (Europol) (2009/371/JHA). *Official Journal of the European Union* L 121, 15.5.2009: 37-66.
- . 2010. The Stockholm Programme — An open and secure Europe serving and protecting citizens. *Official Journal of the European Union*, C 115, 04.05.2010: 1-38.
- . 2008a. Consolidated Version of the Treaty on the Functioning of the European Union. *Official Journal of the European Union*, C 115, 9.5.2008: 47-199.
- . 2008b. Council Framework Decision 2008/841/JHA of 24 October 2008 on the Fight against Organised Crime, *Official Journal of the European Union* L 300, 11.11.2008.
- Europol. 2013. *SOCTA 2013: EU Serious and Organised Crime Threat Assessment*. 's-Gravenzande: Deventer.

- Fijnaut, C. 2014. European Union Organized Crime Control Policies. In L. Paoli, ed. *Handbook of Organized Crime*. New York: Oxford University Press.
- Gatti, F. 2013. Lampedusa, passing the buck of responsibilities: this is how they left the Syrian children drown. *L'Espresso*: November 28. Online available at: <http://espresso.repubblica.it/internazionale/2013/11/28/news/lampedusa-buck-passing-on-the-massacre-so-they-left-syrians-children-drown-1.143363>
- Home Office. 2011. The National Crime Agency. A Plan for the Creation of a National Crime-Fighting Capability. Plan Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty. June.
- Greenfield, V.A. and L. Paoli. 2013. A Framework to Assess the Harms of Crime. *British Journal of Criminology*, 53 (5): 864-885.
- Lappi-Seppälä, T. 2012. Criminology, Crime and Criminal Justice in Finland. *European Journal of Criminology* 9(2): 206-222.
- Levi, M. and J. Burrows. 2008. Measuring the Impact of Fraud in the UK. *British Journal of Criminology* 48: 293-318.
- Levi, M. and M. Innes, P. Reuter and R.V. Gundur. 2013. The Economic, Financial and Social Impacts of Organized Crime in the European Union. Report requested by the European Parliament's Special Committee on Organized Crime, Corruption and Money Laundering. Brussels: European Union.
- MacKenzie, S. and N. Hamilton-Smith. 2011. Measuring Police Impact on Organized Crime. *Policing* 34(1): 7-30.
- Paoli, L. and Greenfield, V.A. 2013. Harm: A Neglected Concept in Criminology, A Necessary Benchmark for Crime-Control Policy. *European Journal of Crime, Criminal Law and Criminal Justice* 21: 359-377.
- Paoli, L. and L. Kersten. 2013. The Harms of Cocaine Trafficking: How Severe and Frequent They Are and What Are Their Causes?. Mimeo.
- Paoli, L., V.A. Greenfield and A. Zoutendijk. 2013. 'The Harm of Cocaine Trafficking. Applying a New Framework for Assessment.' *Journal of Drug Issues* doi: 10.1177/0022042613475614.
- Paoli, L. and T. Vander Beken. 2014. Organized Crime: A Contested Concept. In L. Paoli, ed. *Handbook of Organized Crime*. New York: Oxford University Press.
- Pearson, G. and D. Hobbs. 2001. *Middle Market Drug Distribution*. Home Office Research Study 227. London: Home Office.
- Ratzel, Max-Peter. 2013. Europol: A Chimera or a Powerful New Institution in the International Law Enforcement Family? Lecture given at the University of Leuven Faculty of Law. November 6.
- SOCA, Serious Organised Crime Agency. 2008. *The United Kingdom Threat Assessment of Serious Organised Crime 2008/9*. London: Home Office.
- . 2010. *Annual Plan 2010/2011*. March.
- Van Duyne, P. and T. Vander Beken, 2009. The Incantations of the EU Organised Crime Policy Making. *Crime Law and Social Change* 51: 261-81.
- Zoutendijk, A.J. 2010. Organised Crime Threat Assessments: A Critical Review. *Crime, Law and Social Change* 54(1): 63-86.